

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2228

Introduced by Assembly Member Evans

February 22, 2006

An act to amend Section 10084.1 and 11010 of the Business and Professions Code, and to amend Section 1103.4 of, and to add Section 1102.19 to, the Civil Code, relating to real property disclosures.

LEGISLATIVE COUNSEL'S DIGEST

AB 2228, as amended, Evans. Real property disclosures: environmental hazards experts.

(1) Existing law requires the Department of Real Estate to develop a booklet to educate and inform consumers on various subjects, including what sources can provide information on common environmental hazards.

This bill would require the Department of Real Estate to include in the above-described booklet information regarding the availability of environmental hazard disclosure reports.

(2) Existing law requires any person who intends to offer subdivided lands within this state for sale or lease to file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department. Existing law requires the notice of intention to contain specified information.

This bill would require a person intending to offer subdivided lands to include in a notice of intention a true statement, if applicable, referencing any environmental hazard disclosure reports that have been prepared specifically for the subdivision.

(3)

(1) Existing law requires certain disclosures to be made upon the transfer of residential property, as specified, and prescribes the manner and form of the disclosures.

This bill would require a transferor of residential real property to disclose to a prospective transferee the availability of a report on environmental hazards, as specified, that is applicable to the property and would require the transferor to provide the prospective transferee an opportunity to purchase the report.

(2) Existing law requires certain natural hazard disclosures to be made upon the transfer of residential property, as specified, and prescribes the manner and form of the disclosures. Existing law provides that neither a transferor nor any listing or selling agent shall be liable for any error, inaccuracy, or omission of any information delivered relating to the sale of real property in connection with specified natural hazards if the error, inaccuracy, or omission was not within the personal knowledge of the transferor or the listing or selling agent, and was based on information timely provided by public agencies or by specified experts, and ordinary care was exercised in obtaining and transmitting the information. Existing law requires specified experts requested to deliver a report or opinion on the real property to determine if the property is within specified areas.

This bill would permit an environmental hazards expert to make and deliver the report or opinion described above.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 10084.1 of the Business and~~
2 ~~Professions Code is amended to read:~~
3 ~~10084.1. (a) Notwithstanding Section 10450.6, on or before~~
4 ~~January 1, 1991, the department, using funds appropriated from~~
5 ~~the Education and Research Account in the Real Estate Fund,~~
6 ~~shall develop a booklet to educate and inform consumers on all~~
7 ~~of the following:~~
8 ~~(1) Common environmental hazards that are located on, and~~
9 ~~affect, real property. The types of common environmental~~
10 ~~hazards shall include, but not be limited to, asbestos, radon gas,~~

1 lead-based paint, formaldehyde, fuel and chemical storage tanks,
2 and water and soil contamination.

3 ~~(2) The significance of common environmental hazards and~~
4 ~~what can be done to mitigate these hazards.~~

5 ~~(3) What sources can provide more information on common~~
6 ~~environmental hazards for the consumer, including the~~
7 ~~availability of environmental hazard disclosure reports, as~~
8 ~~described in Section 1102.19 of the Civil Code.~~

9 ~~(b) The department shall seek the advice of the State~~
10 ~~Department of Health Services to assist it in determining the~~
11 ~~contents of the booklet prepared pursuant to this section, and~~
12 ~~shall seek the assistance of the State Department of Health~~
13 ~~Services in the writing of the booklet.~~

14 ~~SEC. 2. Section 11010 of the Business and Professions Code~~
15 ~~is amended to read:~~

16 ~~11010. (a) Except as otherwise provided pursuant to~~
17 ~~subdivision (c) or elsewhere in this chapter, any person who~~
18 ~~intends to offer subdivided lands within this state for sale or lease~~
19 ~~shall file with the Department of Real Estate an application for a~~
20 ~~public report consisting of a notice of intention and a completed~~
21 ~~questionnaire on a form prepared by the department.~~

22 ~~(b) The notice of intention shall contain the following~~
23 ~~information about the subdivided lands and the proposed~~
24 ~~offering:~~

25 ~~(1) The name and address of the owner.~~

26 ~~(2) The name and address of the subdivider.~~

27 ~~(3) The legal description and area of lands.~~

28 ~~(4) A true statement of the condition of the title to the land,~~
29 ~~particularly including all encumbrances thereon.~~

30 ~~(5) A true statement of the terms and conditions on which it is~~
31 ~~intended to dispose of the land, together with copies of any~~
32 ~~contracts intended to be used.~~

33 ~~(6) A true statement of the provisions, if any, that have been~~
34 ~~made for public utilities in the proposed subdivision, including~~
35 ~~water, electricity, gas, telephone, and sewerage facilities. For~~
36 ~~subdivided lands that were subject to the imposition of a~~
37 ~~condition pursuant to subdivision (b) of Section 66473.7 of the~~
38 ~~Government Code, the true statement of the provisions made for~~
39 ~~water shall be satisfied by submitting a copy of the written~~

1 ~~verification of the available water supply obtained pursuant to~~
2 ~~Section 66473.7 of the Government Code.~~

3 ~~(7) A true statement of the use or uses for which the proposed~~
4 ~~subdivision will be offered.~~

5 ~~(8) A true statement of the provisions, if any, limiting the use~~
6 ~~or occupancy of the parcels in the subdivision.~~

7 ~~(9) A true statement of the amount of indebtedness that is a~~
8 ~~lien upon the subdivision or any part thereof, and that was~~
9 ~~incurred to pay for the construction of any onsite or offsite~~
10 ~~improvement, or any community or recreational facility.~~

11 ~~(10) A true statement or reasonable estimate, if applicable, of~~
12 ~~the amount of any indebtedness which has been or is proposed to~~
13 ~~be incurred by an existing or proposed special district, entity,~~
14 ~~taxing area, assessment district, or community facilities district~~
15 ~~within the boundaries of which, the subdivision, or any part~~
16 ~~thereof, is located, and that is to pay for the construction or~~
17 ~~installation of any improvement or to furnish community or~~
18 ~~recreational facilities to that subdivision, and which amounts are~~
19 ~~to be obtained by ad valorem tax or assessment, or by a special~~
20 ~~assessment or tax upon the subdivision, or any part thereof.~~

21 ~~(11) A notice pursuant to Section 1102.6c of the Civil Code.~~

22 ~~(12) (A) As to each school district serving the subdivision, a~~
23 ~~statement from the appropriate district that indicates the location~~
24 ~~of each high school, junior high school, and elementary school~~
25 ~~serving the subdivision, or documentation that a statement to that~~
26 ~~effect has been requested from the appropriate school district.~~

27 ~~(B) In the event that, as of the date the notice of intention and~~
28 ~~application for issuance of a public report are otherwise deemed~~
29 ~~to be qualitatively and substantially complete pursuant to Section~~
30 ~~11010.2, the statement described in subparagraph (A) has not~~
31 ~~been provided by any school district serving the subdivision, the~~
32 ~~person who filed the notice of intention and application for~~
33 ~~issuance of a public report shall immediately provide the~~
34 ~~department with the name, address, and telephone number of that~~
35 ~~district.~~

36 ~~(13) (A) The location of all existing airports, and of all~~
37 ~~proposed airports shown on the general plan of any city or~~
38 ~~county, located within two statute miles of the subdivision. If the~~
39 ~~property is located within an airport influence area, the following~~
40 ~~statement shall be included in the notice of intention:~~

NOTICE OF AIRPORT IN VICINITY

— This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

~~(B) For purposes of this section, an “airport influence area,” also known as an “airport referral area,” is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.~~

~~(14) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports, or environmental hazard disclosure reports, as described in Section 1102.19 of the Civil Code, that have been prepared specifically for the subdivision.~~

~~(15) A true statement of whether or not fill is used, or is proposed to be used in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.~~

~~(16) On or after July 1, 2005, as to property located within the jurisdiction of the San Francisco Bay Conservation and Development Commission, a statement that the property is so located and the following notice: NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION~~

~~This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission’s jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.~~

1 ~~(17) Any other information that the owner, his or her agent, or~~
2 ~~the subdivider may desire to present.~~

3 ~~(e) The commissioner may, by regulation, or on the basis of~~
4 ~~the particular circumstances of a proposed offering, waive the~~
5 ~~requirement of the submission of a completed questionnaire if the~~
6 ~~commissioner determines that prospective purchasers or lessees~~
7 ~~of the subdivision interests to be offered will be adequately~~
8 ~~protected through the issuance of a public report based solely~~
9 ~~upon information contained in the notice of intention.~~

10 ~~SEC. 3.~~

11 ~~SECTION 1.~~ Section 1102.19 is added to the Civil Code, to
12 read:

13 1102.19. (a) A transferor of real property subject to this
14 article shall disclose to a prospective transferee the availability of
15 a report on environmental hazards applicable to the property and
16 shall provide the prospective transferee an opportunity to
17 purchase the report.

18 (b) The reports described in this section prepared by
19 environmental hazards experts shall comply with the transaction
20 screen standards described in ASTM International Standard
21 E1528, or relevant successor standards, to the extent that those
22 standards require searches and disclosures of publicly available
23 databases, but not to the extent that the standards require
24 in-person interviews or inspections of subject properties.

25 ~~SEC. 4.~~

26 ~~SEC. 2.~~ Section 1103.4 of the Civil Code is amended to read:

27 1103.4. (a) Neither the transferor nor any listing or selling
28 agent shall be liable for any error, inaccuracy, or omission of any
29 information delivered pursuant to this article if the error,
30 inaccuracy, or omission was not within the personal knowledge
31 of the transferor or the listing or selling agent, and was based on
32 information timely provided by public agencies or by other
33 persons providing information as specified in subdivision (c) that
34 is required to be disclosed pursuant to this article, and ordinary
35 care was exercised in obtaining and transmitting the information.

36 (b) The delivery of any information required to be disclosed
37 by this article to a prospective transferee by a public agency or
38 other person providing information required to be disclosed
39 pursuant to this article shall be deemed to comply with the
40 requirements of this article and shall relieve the transferor or any

1 listing or selling agent of any further duty under this article with
2 respect to that item of information.

3 (c) The delivery of a report or opinion prepared by a licensed
4 engineer, land surveyor, geologist, environmental hazards expert,
5 or expert in natural hazard discovery dealing with matters within
6 the scope of the professional's license or expertise, shall be
7 sufficient compliance for application of the exemption provided
8 by subdivision (a) if the information is provided to the
9 prospective transferee pursuant to a request therefor, whether
10 written or oral. In responding to that request, an expert may
11 indicate, in writing, an understanding that the information
12 provided will be used in fulfilling the requirements of Section
13 1103.2 and, if so, shall indicate the required disclosures, or parts
14 thereof, to which the information being furnished is applicable.
15 Where that statement is furnished, the expert shall not be
16 responsible for any items of information, or parts thereof, other
17 than those expressly set forth in the statement.

18 (1) In responding to the request, the expert shall determine
19 whether the property is within an airport influence area as
20 defined in subdivision (b) of Section 11010 of the Business and
21 Professions Code. If the property is within an airport influence
22 area, the report shall contain the following statement:

23
24 NOTICE OF AIRPORT IN VICINITY

25 This property is presently located in the vicinity of an
26 airport, within what is known as an airport influence area. For that
27 reason, the property may be subject to some of the annoyances or
28 inconveniences associated with proximity to airport operations
29 (for example: noise, vibration, or odors). Individual sensitivities
30 to those annoyances can vary from person to person. You may wish to
31 consider what airport annoyances, if any, are associated with the
32 property before you complete your purchase and determine whether they
33 are acceptable to you.
34

35 (2) In responding to the request, the expert shall determine
36 whether the property is within the jurisdiction of the San
37 Francisco Bay Conservation and Development Commission, as
38 defined in Section 66620 of the Government Code. If the
39 property is within the commission's jurisdiction, the report shall
40 contain the following notice:

1 NOTICE OF SAN FRANCISCO BAY CONSERVATION
2 AND DEVELOPMENT COMMISSION JURISDICTION

3
4 This property is located within the jurisdiction of the San
5 Francisco Bay Conservation and Development Commission. Use
6 and development of property within the commission's
7 jurisdiction may be subject to special regulations, restrictions,
8 and permit requirements. You may wish to investigate and
9 determine whether they are acceptable to you and your intended
10 use of the property before you complete your transaction.

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